

November 18, 2004

*delivered via email to:
regs.comments@federalreserve.gov*

Ms. Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, DC 20551

Dear Ms. Johnson:

This letter is in response to the *proposed rule; official staff interpretation to Regulation E; Docket No. R-1210*.

Solutran has been an active member of the Electronic Check Council (ECC) for many years. We are a Third-Party Service Provider (TPSP) and work with many of the largest ACH Originators in the country; we process approximately 28% of all RCK transactions and are considered an industry leader. We appreciate the opportunity to respond to the proposed rule and will limit our comments to the check conversion to ACH applications.

Our comments are structured in an **issue, proposal** and Solutran's **response** format.

- 1) **Issue:** Reg E requires authorization of an electronic check conversion transaction (notice to a consumer and the consumer provides a check), but the merchants and other payees are not covered by the regulation.

Proposal: The regulation would now cover merchants and other payees for the limited purpose of the authorization requirement.

Response: Solutran supports the proposal as this is the point where authorization takes place. We would also request that a grace period be given to merchants and other payees to issue new signage – 12 to 18 months.

- 2) **Issue:** There is a lack of consistency in the notices provided to consumers for check conversion transactions, leading to consumer confusion.

Proposal: Model clauses would be provided to encourage uniformity/consistency, and these would provide safe harbor from civil and criminal liability.

Response: Solutran supports the proposal.

- 3) **Issue:** Under the current Reg E, in order to obtain a consumer's authorization for an electronic check conversion transaction, the merchant and other payees must tell the consumer that the check "will" be converted. Once a check is authorized to be converted, the same item may not be used as a check transaction. This creates issues when a converted item is returned and the merchant and other payees would like to "re-convert" the item to a check for further processing. Or, the merchant and other payees would like

to have an option up front to process the payment as a check or as an electronic transaction – choosing the least cost clearing alternative.

Proposal: New disclosure statements would be introduced that would allow the merchant and other payees to have the flexibility to clear the item either as a check or as an electronic transaction. One sample is as follows, “When you provide a check, you authorize us either to use information from your check to make a one-time EFT from your account or to process this transaction as a check.”

Response: Solutran supports the proposal. This will allow the market to pursue the lowest cost clearing option.

- 4) **Issue:** Consumers have expressed concern that they are unaware of what check conversion is and why the methods are different with POP versus ARC. They believe check conversion is mandatory, and they want their checks back.

Proposal: Two disclosures would be required, in addition to the authorization disclosure mentioned in *Issue 3*. A sample provided is, “When we use your check to make an EFT, funds may be withdrawn from your account quickly and you will not receive your check back from your financial institution.”

Response: Solutran does not support the proposal. We do not feel it is the responsibility of the merchant to notify the consumer that they should have money in their account before they purchase goods/services; that is the responsibility of the consumer. We also believe that a significant amount of consumer confusion comes from the inconsistent authorization requirements imposed by NACHA. Solutran strongly encourages the Board to adopt a position where notice equals authorization for all EFTs.

- 5) **Issue:** Reg E requires that notice be provided prior to the receipt of each check to be converted. It may be impossible to comply with the notice requirement for ARC transactions where multiple checks are mailed during the billing cycle – whether from the accountholder or someone else (e.g. roommates paying a utility bill).

Proposal: Obtaining a single authorization from the accountholder is sufficient to convert multiple checks submitted after receiving an invoice or during a billing cycle.

Response: Solutran supports the proposal. We believe it is within the “spirit” of check conversion applications.

- 6) **Issue:** In some instances, Reg E and NACHA rules are different for electronic check conversion transactions. For example, Reg E provides that notice and the consumer providing a check constitutes authorization for an EFT. The NACHA rules require written, signed authorization for a check conversion transaction at the point of sale (POP).

Proposal: The Board is not explicitly proposing anything as much as they are asking for people to comment on whether Reg E should require merchants and other payees to obtain the consumer’s written, signed authorization for POP transactions. Doing so would align Reg E with the current NACHA rules.

Response: Solutran strongly encourages the Board to adopt a position where notice equals authorization for an EFT. To require a signature in one application (POP) but not in another (ARC) only serves to confuse the consumer. Under the current NACHA rules,



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if a consumer uses a self check out lane at the grocery store and pays with a check, no signature is required as it is an ARC transaction. However, if the same consumer goes to a full service check out lane, at the same store, and writes a check that will be a POP transaction and a signature is required. Given proper notice, as is contemplated in this proposed rule, the consumer will enjoy a more consistent industry treatment of check conversion applications; the consumer will be less confused.

- 7) **Issue:** Related to *Issue 6*, The NACHA rules require written, signed authorization for a service fee transaction on a payment returned for non-sufficient funds.

Proposal: The Board is not explicitly proposing anything as much as they are asking for people to comment on whether Reg E should require merchants and other payees to obtain the consumer's written, signed authorization for service fee transactions. Doing so would align Reg E with the current NACHA rules. Currently, Reg E provides that notice and the consumer providing a check constitutes authorization for an EFT. Sample language includes, "If there are insufficient funds in your account, you authorize us to charge a fee of \$XX.YY, and collect that amount through an EFT from your account."

Response: Solutran strongly encourages the Board to adopt a position where notice equals authorization for all EFTs – including service fee transactions. To require a signature in one application but not in another only serves to confuse the consumer. Given proper notice, as is contemplated in this proposed rule, the consumer will enjoy a more consistent industry treatment of check conversion applications; the consumer will be less confused.

We applaud the efforts of the Board of Governors to continue creating (and interpreting) the legal framework within which the industry can continue to efficiently "electronify" the paper check system. We encourage the continued aggressive, yet prudent, path the Board is going down.

Thank you for allowing Solutran to respond to this proposed rule. Please feel free to contact me if you have any questions or comments regarding our response.

Sincerely,

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